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18 UNITED STATES DISTRICT COURT
19 DISTRICT OF ARIZONA

20 Michael Marvin Ely, on behalf of himself
and all others similarly situated,

21 Plaintiff,

22 vs.
23

24 Nancy Berryhill, in her official capacity as
the Acting Commissioner of the Social
25 Security Administration,

26 Defendant.
27

Case No. 4:18-cv-00557-TUC-BGM

**DECLARATION OF PUTATIVE
CLASS MEMBER JAMES
OBERGEFELL**

1 **DECLARATION OF PUTATIVE CLASS MEMBER JAMES OBERGEFELL**

2 I, James Obergefell, declare as follows:

3 1. I make this declaration of my own personal knowledge, and, if called as a
4 witness, I could and would testify competently to the matters stated herein.

5 2. I am 52 years old. I grew up in Sandusky, Ohio and graduated from the
6 University of Cincinnati with a bachelor's degree in secondary education 1990.

7 3. I fell in love with John Arthur, my late spouse, the third time we met. This
8 was before he was diagnosed with amyotrophic lateral sclerosis ("ALS"), before we
9 would have to fly a medically equipped plane for the chance to marry before he died, and
10 before my fight to be listed as a spouse on John's death certificate would lead to the
11 Supreme Court's decision in *Obergefell v. Hodges*, 135 S.Ct. 2584 (2015). I am James
12 Obergefell, the lead plaintiff and namesake of that case.¹

13 4. I could not have conceived any of this would happen when John and I first
14 met in Cincinnati, in 1992. We quickly formed a devoted and loving relationship, and led
15 a quiet, contented life together. For many years we both worked in the same field
16 providing information technology consulting services. We paid our taxes, voted, and
17 enjoyed being involved in our community.

18 5. We hosted foreign exchange students in our home, served as members of
19 the Mount Washington Community Council, Pendleton Neighborhood Council, and as
20 members and officers of the North Avondale Neighborhood Association. We helped
21 raise money for the Cincinnati Symphony and the Cincinnati Preservation Association,
22 and Artworks, a workforce development and job-training program for youth passionate
23 about the arts.

24 6. John and I developed many close friends and had many family members
25 throughout Ohio. I have 10 nieces and nephews and six great nieces and nephews.
26 Together, John and I were close to many of our young nieces and nephews, and we

27 _____
28 ¹ Some of this testimony is drawn from a book I co-wrote about my life with John. See
Debbie Cenziper & James Obergefell, *Love Wins: The Lovers and Lawyers Who Fought
the Landmark Case For Marriage Equality* (2017).

1 delighted in spending time with them. We felt at home in Cincinnati, surrounded by
2 loved ones and friends.

3 7. My relationship with John was my world, and my life. That world felt like
4 it shattered irretrievably when John was diagnosed with ALS at the age of 45. There is
5 no cure for this disease, and we knew that he only had a few years to live at most.

6 8. The symptoms started when John's left foot began slapping the floor harder
7 than the right one when walking; later, his left foot began dragging as if a ten-pound
8 weight was bearing down on his shoe. Eventually the heaviness crept higher into his calf
9 and thigh. When it came, the diagnosis of ALS was a death sentence. The neurological
10 disorder attacks the nerve cells in the brain and spinal cord, eventually robbing every
11 muscle in the body of movement, including the diaphragm, which facilitates air flow to
12 the lungs. ALS literally suffocates its victims to death.

13 9. As we adjusted to this new life, we moved to a new condominium with
14 hallways wide enough for a wheelchair and windows big enough to let in the sun when
15 John was no longer able to walk outside. At that point, we had purchased over three
16 homes together during the 20 years of our relationship, but I remember the painful
17 moment when John insisted that the final deed be in my name only. It was his way of
18 trying to simplify life for me, and to accept the fact that we would soon be parted by
19 death.

20 10. The first winter after the diagnosis was a whirlwind of loss, as John's
21 dwindling functionality progressed from his left foot to his left leg, then to his left hand,
22 shoulder, arm, and fingers. His limbs twitched and spasmed. I coaxed his twitching arms
23 into a dress shirt every morning before I went to work. When John could no longer clasp
24 the buttons, I took him to a tailor and had shirts made with Velcro instead of buttons.

25 11. When John started to lose control of his right foot we traded his cane for a
26 walker. John's disease progressed far faster than either of us imagined, and on the
27 darkest days, when John struggled to hold a fork or brush his hair, I would sneak into an
28 empty room, and bury my face in my hands and cry. Time had been tilted on its side, and

1 I never knew when a new day might be the last with an arm that moved freely or a leg
2 that could bend without pain. I would lay awake long into the night, every night, feeling
3 tormented by my inability to end John's suffering.

4 12. In the fall of 2012, John traded the walker he was then using for a manual
5 wheelchair, which I hoisted into the back of our SUV on outings to dinners and concerts.
6 John used the wheelchair in an ALS walk and helped raise more than \$22,000 through a
7 team that I dubbed "Half Full." John never complained once about his diagnosis or
8 suffering, and never asked "why me?" A glass half full was the perfect way to describe
9 the way he tried to look at his new life.

10 13. As the disease progressed, I helped John go to the bathroom, and when he
11 could no longer use the grab bars we had installed in the shower, I would get into the
12 shower with him each day to help him bathe.

13 14. The last limb to go was John's right arm, and with it came a power
14 wheelchair that John's brother called the "urban assault vehicle" in a halfhearted attempt
15 to make John laugh. John hated the chair's bulk and the embarrassing hum it made, and
16 he told me just before Christmas in 2012, "I don't want to go out in that thing. I feel like
17 a spectacle." And so John's world grew smaller and smaller. Then John had to trade the
18 wheelchair for a bed, and it seemed the only thing we could do was wait.

19 15. One of the cruelest ironies of ALS is that its victims lose their muscles and
20 motor skills, but not their ability to feel pain. In John's case, the pain often shot down his
21 legs, hot and unrelenting. I spent hours hunched by John's bedside, shifting his position
22 to relieve pressure. I brought in a hospital bed, set it up in the center of the bedroom, and
23 moved to the guest room across the hall. I tried to stay awake for as much of the night as
24 I could, in case John needed his bedpan changed, or his position shifted in bed to help
25 with the pain.

26 16. When I finally made the call to a hospice it seemed almost surreal, despite
27 months of living with the menace of this deadly disease. But nearly every limb on John's
28 body had lost function and his speech had started to go. I was shifting between two

1 extremes, numbness and absolute misery, by the time I e-mailed friends in March 2013 to
2 say that John could no longer answer calls on his cell phone.

3 17. It felt like the clouds broke and some sunshine finally peeked through when
4 the Supreme Court issued its decision in *United States v. Windsor*, 570 U.S. 744, (2013).
5 I remember John watching television coverage of the decision with rapt attention. We
6 started talking about marriage early in our relationship, but made the decision that instead
7 of just having a symbolic ceremony, we would only get married if it actually carried legal
8 weight. With the federal government finally poised to recognize marriages of same-sex
9 couples, I said to John, "Let's get married."

10 18. In our eyes, and the eyes of our loved ones, we were a married couple. Our
11 families and friends considered us married, and treated us as such. But we also knew that
12 we were strangers to each other under the law in our home state, and until that point,
13 under federal law.

14 19. With the prospect of some legal recognition finally a reality, I began
15 feverishly researching states where we could marry. I researched New York's
16 requirements, because it was one of the closest states at the time with marriage equality.
17 But unfortunately both applicants had to appear at the courthouse to apply for a marriage
18 license, which was impossible for us. I quickly figured out that only one partner had to
19 apply in person for a marriage license in Maryland, and settled on that as the state where
20 we would wed.

21 20. I started researching ambulances, but they were too slow and bumpy, and I
22 was struck again and again by the absurd cruelty of having a bedridden man travel 520
23 miles, when our local county courthouse was only six blocks away. The best option was
24 a plane fitted with medical equipment, which would get to Maryland quickly and had
25 room for a stretcher. But it would cost nearly \$14,000.

26 21. On July 11, 2013, through the loving efforts of our friends and family who
27 fundraised for us, we were able to secure a medically equipped airplane and flew to
28 Maryland. While our plane sat on the tarmac at the Baltimore airport in Anne Arundel

1 County, Maryland, we were married inside the plane in a ceremony officiated by John's
2 aunt, Paulette Roberts. Saying "I thee wed" was the most beautiful moment of my life.
3 John suffered—traveling with bones that ached and skin that burned—so that we could
4 marry, however, and the memory will forever be tinged with the frustration and hurt of
5 knowing that the person I loved went through terrible pain and discomfort just to do
6 something millions of others could take for granted.

7 22. Shortly thereafter we sought a temporary restraining order ("TRO")
8 requesting that the state of Ohio be required to recognize our marriage on John's death
9 certificate, so that I could be listed as his husband. By that time John was in hospice, and
10 we worried that he might only have weeks or days left to live. John wrote in a
11 declaration supporting our motion, "I am married to James Obergefell. I love him and
12 want our last days together to be a celebration of our love. How can we celebrate when
13 Ohio law requires that my death certificate say I am not married and that I have no
14 surviving spouse? ... Only through court action to recognize our marriage in Ohio can
15 James and I receive the dignity that our marriage deserves. Please act soon."

16 23. By this point, John could not even wear his wedding ring because the
17 weight of it hurt his fingers too much; nor could he wear clothing, which made his skin
18 burn. We covered him with an electric blanket instead.

19 24. John's voice had been reduced to a whisper, and he struggled to articulate
20 every word in between long, shallow breaths. But in the days after our marriage, he
21 pushed out a single, perfect word: "husband." He would say, "Good night, husband,"
22 "good morning, husband," and "I love you, husband." I had to bend low to just hear him,
23 but it was the most beautiful sound I had ever heard.

24 25. As much as John suffered in the final months of his life, he was so loving
25 that he remained focused on my wellbeing after he was gone. When we first considered
26 filing a lawsuit to seek recognition for our marriage, he told our lawyer, "I want Jim to be
27 legally taken care of after I die."
28

1 26. At the hearing on our TRO motion, I was called to testify and read a
2 statement, excerpted in relevant part below:

3 Your Honor, during our 20 years together, John and I have taken care of each
4 other during good times and bad, for richer and in poorer, and in sickness and
5 in health. For the past two years, I've had the honor of caring for him as ALS
6 has stolen every ability from him. Rarely a day goes by that he doesn't
7 apologize for what he feels he's done to me by getting sick. He is physically
8 incapable of doing anything to thank me or assuage his feelings of guilt, and
9 we all know that there are times when words aren't enough. We need to do
10 something. What he wants is to die knowing that I will be legally cared for
11 and recognized as his spouse after he is gone. That would give him peace,
12 knowing he was able to care for me as his last thank you.

9 27. At the end of John's life he was a gaunt 100 pounds. He had lost the ability
10 to press the buzzer that we had given him to call me for help when he needed it, and so he
11 used a sensor that he could activate by slightly tilting his head to the right on his pillow.
12 ALS had stolen his speech by this time, and when he called for help I sometimes
13 struggled frantically to figure out what he needed, such as when he was struggling to
14 breathe but couldn't say "inhaler."

15 28. After we were married, I assumed I would qualify for family leave to take
16 care of him, but my employer denied that request because Ohio did not recognize our
17 marriage. I left my job, with no guarantee of a position to which I could return, and lived
18 off of our savings while I cared for him.

19 29. John died on October 22, 2013—20 years, nine months, and 22 days after
20 we fell in love. Despite the depth of his suffering as he fell deeper into illness, death
21 came peacefully on that cold October day, and he simply stopped breathing.

22 30. I had my wedding ring fused with John's, and put some of his ashes inside
23 a small channel cut inside the ring, so that he is always with me.

24 31. The indignities of being denied recognition for our marriage continued to
25 accrue even as my case proceeded in the courts. On October 27, 2014, the Social
26 Security Administration ("SSA") notified me in writing that I did not qualify for the
27 lump-sum death benefit. The letter explained that I was "not John Arthur's widower" in
28 the eyes of the SSA because we were not validly married under the laws of Ohio. I

1 hoped that at least one of the marriage equality cases making their way through the courts
2 would correct this kind of discriminatory treatment, so that others were not painfully
3 disrespected in this way as they were grieving the loss of their beloved spouse.

4 32. Although I sensed not long after the Supreme Court issued *Obergefell* that
5 its promise of equality might take some time to be fully realized, I did not anticipate that I
6 would again face differential treatment from the government, as vestiges of the historical
7 discrimination against same-sex couples continue to linger. I am now in the same
8 situation as Plaintiff Michael Ely. Despite the extraordinary lengths to which John and I
9 went to get married, we were only able to be married for approximately three months.

10 33. Since John died, my finances have changed dramatically, and I do not
11 currently have traditional income. I am not certain what my work life will look like
12 going forward, but I had planned to stop working before reaching the full retirement age
13 of 67. John was the higher wage earner, and if I could collect survivor's benefits based
14 on John's work record, that would allow me to plan for my retirement like any other
15 surviving spouse, and make plans about when to begin my own retirement benefits.

16 34. Equally as important to me, however, is working to ensure that *Obergefell's*
17 guarantees translate into lived equality for other same-sex survivors. I was in tears as I
18 read the decision, and particularly the passages recognizing that same-sex couples must
19 be accorded equal dignity in sickness and in death. The Court said of my claim, "James
20 Obergefell now asks whether Ohio can erase his marriage to John Arthur for all time."
21 *Obergefell*, 135 S. Ct. at 2606. The Court answered this question by recognizing that I
22 and the other plaintiffs were simply asking "for equal dignity in the eyes of the law," and
23 held that the "Constitution grants them that right." *Id.* at 2608.

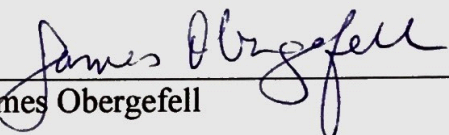
24 35. John's last wish was that I would be taken care of after he passed away. I
25 respectfully ask this court to certify the putative class in this case, and ultimately, to make
26 sure that *Obergefell's* promise does not fail surviving spouses like me, particularly when
27 we need it the most as we age.

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I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed this 21 day of April, 2019.


James Obergefell

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CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2019, I served the foregoing document on Defendant Nancy Berryhill through the CM/ECF system.

/s/ Jamie Farnsworth
Jamie Farnsworth
Paralegal